

Information contained in this book is not intended to be and should not be used as a substitute for specific legal advice, since legal opinions may only be given in response to inquiries regarding specific factual situations

## **INTRODUCTION**

It is unlawful for an employer to treat an employee or applicant for employment differently because of his or her race, creed, religion, color, national origin, age, physical or mental disability, marital status, or sex. Montana's public employers are further prohibited from treating an employee or applicant differently because of his or her political ideas.

The Human Rights Bureau strongly encourages all Montana employers to develop effective discrimination policies and grievance procedures. Effective policies and procedures will protect your employees from discrimination and may prevent liability for violations of those laws.

Montana has over 30,000 private businesses and a variety of public employers. Consequently, there is no "one size fits all" discrimination policy. The sample policies shown in this pamphlet are for a fictitious employer, Widget Inc., and are only intended to serve as guidance. As an employer, you will want to customize your discrimination policy to fit your needs.

Remember in order for a discrimination policy to be effective it must be adequately disseminated and consistently applied. The policy should indicate what the consequences are for a violation of the policy. Discrimination policies should be referenced and incorporated into other business-related documentation such as job announcements, job descriptions, or corrective action materials. It is important for a discrimination policy to clearly identify appropriate and current contact information for discrimination complaints, including alternate contacts in case the harasser is the contact. After it has been developed, the policy should guide the development and implementation of all aspects of people management in your business. Be sure to provide a clear explanation of the responsibilities of both management and the applicant or employees.

## **BASIC DISCRIMINATION POLICY**

Consider the development of a discrimination policy as an opportunity for your business to make an explicit commitment to the principles of equality. Choose a

language and style that reflects your values and suits your business needs.  
Example:

Widget Inc. is committed to valuing diversity. We believe that all employees and applicants should be treated with dignity and respect. At Widget Inc., we do not discriminate in employment based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, or political beliefs. Any applicant for employment or employee who believes that he or she has been subjected to discrimination based upon any of these factors should immediately contact our Human Resources Department (include contact information). You may also contact the Montana Human Rights Bureau and/or the federal Equal Employment Opportunity Commission. We will not retaliate for making or participating in a complaint of discrimination.

Only public employers must also protect persons based on their political belief. A private employer is not obligated to offer such protections under the Montana Human Rights Act.

## **DISABILITY**

An employer may not discriminate against an otherwise qualified worker or applicant with a disability who can perform the essential functions of the job with or without a reasonable accommodation. These protections include all phases of the employment relationship including hiring decisions, hours of work, wage rate, reasons for discipline, and terminations. In addition, an employer has an obligation to attempt a reasonable accommodation to enable the disabled worker to perform the essential functions of the job. Accommodations that would place an undue hardship on an employer or that would endanger the health or safety of any person are not considered reasonable.

Both the Montana Human Rights Act and the Governmental Code of Fair Practices prohibit discrimination against persons with physical or mental disabilities. These laws define "physical or mental disability" in three different ways: (i) a physical or mental impairment that substantially limits one or more of a person's major life activities; (ii) a record of such an impairment; or (iii) a condition regarded as such an impairment. Example:

Widget Inc. does not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, privileges or conditions of employment due to physical or mental disability.

Widget Inc. provides reasonable accommodation to an otherwise qualified applicant or employee with a known disability that prevents the individual from participating in the application process, competing in the selection process, performing the essential functions of the job, and enjoying equal benefits and privileges of employment. Any otherwise qualified applicant for employment or employee with a disability who needs reasonable accommodation should contact our Human Resources Department and/or his or her immediate supervisor of the nature of the disability and the accommodation requested.

## **SEXUAL HARASSMENT**

Prevention is the best tool to eliminate sexual harassment in the workplace. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Employers should take steps necessary to prevent sexual harassment from occurring. Clearly communicate to your employees that sexual harassment will not be tolerated. It is important to establish an effective complaint or grievance process that allows your business to take immediate and appropriate action when an employee complains about unwelcome behavior.

As an employer, you are responsible for harassment by a supervisor that culminates in a "tangible employment action." If the harassment did not lead to a tangible employment action, the employer is liable unless it can prove that: (1) it exercised reasonable care to prevent and promptly correct any harassment; and 2) the employee unreasonably failed to complain to management or to avoid harm otherwise.

A "tangible employment action" means a significant change in employment status. Examples include hiring, firing, promotion, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignment.

Example:

It is the policy of Widget Inc. to provide a work environment free from sexual harassment of employees, customers, clients and any other persons. At Widget Inc., we prohibit unwelcome sexual conduct that unreasonably interferes with an employee's job performance or creates an

intimidating, hostile or offensive working environment. This includes displaying sexually suggestive emails, objects, pictures, cartoons or posters. Widget Inc. prohibits verbal abuse of a sexual nature, sexually oriented jokes, innuendoes, or obscenities.

Sexual conduct sought in return for job benefits or opportunities, such as the loss or threatened loss of a job for failing to comply with a supervisor's sexual demands is considered discrimination. This may include situations that began as mutual attractions, but later ceased to be reciprocal.

Harassment not involving sexual activity or language is also discriminatory if it is sufficiently patterned or pervasive and directed at employees because of their sex. For example, hazing an employee based on gender because he or she is in a non-traditional work environment.

Employers should take reasonable care to prevent, and promptly and effectively correct any harassment, and provide a mechanism for employees to report the harassment.

## **PREGNANCY**

In Montana, women who are pregnant or have conditions related to pregnancy must be treated in the same manner as other applicants or employees with similar abilities or limitations.

It is unlawful to refuse a reasonable leave of absence for a pregnancy. Whether pregnancy leave is reasonable is determined case-by-case based upon the ability of the employee to perform her job. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be six to eight weeks after delivery.

If the employee is unable to perform her job prior to delivery, or if there are complications such as illness or surgical delivery, necessary leave may be longer than normally required. If the employer and the employee cannot agree in establishing a reasonable period of time for the leave, the employer should rely on the judgment of the employee's physician or other medical provider who has actually examined the employee.

Example:

Widget Inc. will not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment based upon a temporary disability

resulting from pregnancy, childbirth, or related medical conditions.

Widget Inc. will grant a request by an employee for a reasonable leave of absence for that period of time during which a female employee is incapable of performing normal job duties due to pregnancy. Widget Inc. may require medical verification of disability.

Widget Inc. will treat pregnancy leave the same as leave for any other disability that qualifies for benefits under Widget Inc.'s disability leave plan. Widget Co. will not require any employee to take a mandatory pregnancy leave for an unreasonable length of time.

If an employee requires pregnancy leave, the employee will provide Widget Co. with reasonable notice of the expected date of leave. An employee returning from pregnancy leave shall provide reasonable notice of her intent to return to work. Upon receiving notice of an employee's intent to return to work, Widget Co. will reinstate the employee as soon as reasonably possible. Widget Co. will reinstate an employee who has taken a reasonable leave of absence for pregnancy to her original job or to an equivalent job with equivalent pay and accumulated seniority and other benefits.

Except as required by a bona fide occupational qualification (BFOQ) or compliance with a lawful affirmative action plan or government reporting requirement, employers should not elicit information concerning race, color, national origin, age, marital status, religion, creed or sex (including pregnancy) from applicants prior to hire. Government employees add political belief)

## **UNLAWFUL HARASSMENT**

Harassment violates the law if it involves discriminatory treatment based on any one of the protected classes, including sex. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not serious. Rather, the conduct must be sufficiently frequent or severe to create a hostile work environment or result in a "tangible employment action," such as hiring, firing, promotion, or demotion. Example:

Widget Inc.'s policy is to provide employees with a work environment free of harassment. Harassment of employees, clients, customers, and any other persons doing business with Widget Inc. because of a person's race,

color, national origin, age, physical or mental disability, marital status, religion, creed, or sex is prohibited.

Examples of other prohibited harassment include, but are not limited to: Coercion of employees, clients, or customers in the participation or non-participation in religious activities; or ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed or sex if these actions create an intimidating, hostile, or offensive working environment.

## **RELIGIOUS DISCRIMINATION**

It is an unlawful discriminatory practice for an employer to discriminate because of religion. The term religion includes all aspects of religious observance, practice and belief. For example, an employer may not refuse to hire individuals of a certain religion, may not impose stricter promotion requirements for persons of a certain religion, and may not impose more or different work requirements on an employee because of that employee's religious beliefs or practices. When it comes to religious expression, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

For purposes of providing equal employment opportunities, an employer has a duty to accommodate an employee's religion unless to do so would cause an undue hardship on the employer. An employer can show undue hardship if accommodating an employee's religious practices requires more than ordinary administrative costs, diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or if the proposed accommodation conflicts with another law or regulation. Example:

The Widget Inc. does not treat employees or applicants less or more favorably because of religious beliefs or practices. Widget Inc. will make reasonable accommodation for religious beliefs or practices. An employee whose religion conflicts with an employment requirement has a duty to inform Widget Inc. of the conflict in a timely manner. Once informed of a religion-based conflict, Widget Inc. will initiate good faith efforts to accommodate the conflict. Widget Inc. and the employee will work together to find a reasonable resolution of conflicts that may arise

between an employer's business and an employee's religion. An accommodation that creates an undue hardship on a department is not a reasonable accommodation.

## **GRIEVANCE PROCEDURE**

The difference between a good employer and a bad employer is not that good employers do not have discrimination complaints, but that the good employers have a process in place and will investigate and deal promptly, thoroughly, and fairly with complaints.

### **Sample Grievance Procedure:**

If you believe you have been subjected to a violation of our discrimination policies immediately report the incident to your immediate supervisor and/or the contact listed below from Human Resources.

Human Resources Equal Employment Officer  
Bob Widgetson  
(406) 555-1212  
123 Lake Shore Drive  
Helena, Montana 59601

If your immediate supervisor is involved in the matter, inform your immediate supervisor's supervisor or Human Resources. Once informed, the supervisor who received a report of a violation will immediately notify his or her immediate supervisor and Human Resources.

Widget Inc.'s Human Resource Equal Employment Officer will begin an investigation as soon as possible and make a factual report no later than 10 working days after receiving notice of the alleged violation. The investigation will include interviewing as many persons as possible that have knowledge of the matter and reviewing any relevant documents.

Upon receipt of the complaint alleging harassment, Human Resources will take all appropriate steps to prevent the alleged conduct from continuing pending completion of the investigation. Human Resources will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.

Within two working days of receiving the factual report, Widget Inc. will, in writing, inform the complainant, any other employees directly involved, and their immediate supervisor of the results of the investigation. Otherwise, the factual report in the decision will remain confidential and will be disseminated only to persons having a need or right to know which outweighs the privacy rights of the persons involved.

If the results of the investigation establish that there is insufficient evidence to find that a policy violation occurred, Human Resources will inform all parties involved that the matter is concluded.

If the results of the investigation established that a policy violation occurred, Widget Inc. will take appropriate action, including, but not limited to, disciplinary measures pursuant to our disciplinary policy – which may include termination.

Widget Inc. will not retaliate against any employee for filing a discrimination grievance or for participating in any way in a grievance procedure.

If in addition to following the grievance procedures described above, any employee who believes he or she, or another employee or applicant for employment, has been subject to unlawful discrimination may contact:

Montana Human Rights Bureau, 1625 11th Avenue, P.O. Box 1728, Helena, Montana 59624-1728, 406-444-2884, or 1-800-542-0807, or

United States Equal Employment Opportunity Commission, Washington, DC 20507, 1-800-669-4000 or [www.eeoc.gov](http://www.eeoc.gov).

## **RETALIATION**

It is unlawful for an employer to retaliate against or otherwise discriminate against an employee, past employee or applicant because he or she has complained about discrimination, is associated with a person who was complained about discrimination or exercised his or her rights under discrimination laws. Sample:



Widget Inc. will not retaliate against any applicant, employee, or past employee for opposing unlawful discriminatory practices, filing a discrimination complaint and/or testifying or participating in any other manner in a discrimination proceeding.

## **FOR MORE INFORMATION**

### **State of Montana Human Rights Bureau**

1625 11th Avenue— 2nd floor

P.O. Box 1728

Helena, MT 59624-1728

(406) 444-2884

Toll free 1-800-542-0807

TTY (406) 444-9696 or

Relay Service 711

You can view this policy guide along with administrative rules, the Montana Human Rights Act, human rights decisions, statistics, employment and housing discrimination information, informational presentations, training opportunities and information on filing a complaint at our website: